

Feb 26, 2018

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ATNAFU BEZA NEGUSSIE,

Plaintiff,

vs.

COMMISSIONER OF SOCIAL

SECURITY,

Defendant.

No. 2:16-cv-00403-MKD

ORDER DENYING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT AND GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

ECF Nos. 16, 17

BEFORE THE COURT are the parties' cross-motions for summary judgment. ECF Nos. 16, 17. The parties consented to proceed before a magistrate judge. ECF No. 6. The Court, having reviewed the administrative record and the parties' briefing, is fully informed. For the reasons discussed below, the Court denies Plaintiff's Motion (ECF No. 16) and grants Defendant's Motion (ECF No. 17).

JURISDICTION

The Court has jurisdiction over this case pursuant to 42 U.S.C. §§ 405(g); 1383(c)(3).

STANDARD OF REVIEW

A district court's review of a final decision of the Commissioner of Social Security is governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is limited; the Commissioner's decision will be disturbed "only if it is not supported by substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012). "Substantial evidence" means "relevant evidence that a reasonable mind might accept as adequate to support a conclusion." *Id.* at 1159 (quotation and citation omitted). Stated differently, substantial evidence equates to "more than a mere scintilla[,] but less than a preponderance." *Id.* (quotation and citation omitted). In determining whether the standard has been satisfied, a reviewing court must consider the entire record as a whole rather than searching for supporting evidence in isolation. *Id.*

In reviewing a denial of benefits, a district court may not substitute its judgment for that of the Commissioner. *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001). If the evidence in the record "is susceptible to more than one rational interpretation, [the court] must uphold the ALJ's findings if they are supported by inferences reasonably drawn from the record." *Molina v. Astrue*, 674

1 F.3d 1104, 1111 (9th Cir. 2012). Further, a district court “may not reverse an
2 ALJ’s decision on account of an error that is harmless.” *Id.* An error is harmless
3 “where it is inconsequential to the [ALJ’s] ultimate nondisability determination.”
4 *Id.* at 1115 (quotation and citation omitted). The party appealing the ALJ’s
5 decision generally bears the burden of establishing that it was harmed. *Shinseki v.*
6 *Sanders*, 556 U.S. 396, 409-10 (2009).

7 **FIVE-STEP EVALUATION PROCESS**

8 A claimant must satisfy two conditions to be considered “disabled” within
9 the meaning of the Social Security Act. First, the claimant must be “unable to
10 engage in any substantial gainful activity by reason of any medically determinable
11 physical or mental impairment which can be expected to result in death or which
12 has lasted or can be expected to last for a continuous period of not less than twelve
13 months.” 42 U.S.C. §§ 423(d)(1)(A); 1382c(a)(3)(A). Second, the claimant’s
14 impairment must be “of such severity that he is not only unable to do his previous
15 work[,] but cannot, considering his age, education, and work experience, engage in
16 any other kind of substantial gainful work which exists in the national economy.”
17 42 U.S.C. §§ 423(d)(2)(A); 1382c(a)(3)(B).

18 The Commissioner has established a five-step sequential analysis to
19 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R. §§
20 404.1520(a)(4)(i)-(v); 416.920(a)(4)(i)-(v). At step one, the Commissioner

1 considers the claimant's work activity. 20 C.F.R. §§ 404.1520(a)(4)(i);
2 416.920(a)(4)(i). If the claimant is engaged in "substantial gainful activity," the
3 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
4 404.1520(b); 416.920(b).

5 If the claimant is not engaged in substantial gainful activity, the analysis
6 proceeds to step two. At this step, the Commissioner considers the severity of the
7 claimant's impairment. 20 C.F.R. §§ 404.1520(a)(4)(ii); 416.920(a)(4)(ii). If the
8 claimant suffers from "any impairment or combination of impairments which
9 significantly limits [his or her] physical or mental ability to do basic work
10 activities," the analysis proceeds to step three. 20 C.F.R. §§ 404.1520(c);
11 416.920(c). If the claimant's impairment does not satisfy this severity threshold,
12 however, the Commissioner must find that the claimant is not disabled. 20 C.F.R.
13 §§ 404.1520(c); 416.920(c).

14 At step three, the Commissioner compares the claimant's impairment to
15 severe impairments recognized by the Commissioner to be so severe as to preclude
16 a person from engaging in substantial gainful activity. 20 C.F.R. §§
17 404.1520(a)(4)(iii); 416.920(a)(4)(iii). If the impairment is as severe or more
18 severe than one of the enumerated impairments, the Commissioner must find the
19 claimant disabled and award benefits. 20 C.F.R. §§ 404.1520(d); 416.920(d).

1 If the severity of the claimant's impairment does not meet or exceed the
2 severity of the enumerated impairments, the Commissioner must pause to assess
3 the claimant's "residual functional capacity." Residual functional capacity (RFC),
4 defined generally as the claimant's ability to perform physical and mental work
5 activities on a sustained basis despite his or her limitations, 20 C.F.R. §§
6 404.1545(a)(1); 416.945(a)(1), is relevant to both the fourth and fifth steps of the
7 analysis.

8 At step four, the Commissioner considers whether, in view of the claimant's
9 RFC, the claimant is capable of performing work that he or she has performed in
10 the past (past relevant work). 20 C.F.R. §§ 404.1520(a)(4)(iv); 416.920(a)(4)(iv).
11 If the claimant is capable of performing past relevant work, the Commissioner
12 must find that the claimant is not disabled. 20 C.F.R. §§ 404.1520(f); 416.920(f).
13 If the claimant is incapable of performing such work, the analysis proceeds to step
14 five.

15 At step five, the Commissioner considers whether, in view of the claimant's
16 RFC, the claimant is capable of performing other work in the national economy.
17 20 C.F.R. §§ 404.1520(a)(4)(v); 416.920(a)(4)(v). In making this determination,
18 the Commissioner must also consider vocational factors such as the claimant's age,
19 education and past work experience. 20 C.F.R. §§ 404.1520(a)(4)(v);
20 416.920(a)(4)(v). If the claimant is capable of adjusting to other work, the

1 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
2 404.1520(g)(1); 416.920(g)(1). If the claimant is not capable of adjusting to other
3 work, analysis concludes with a finding that the claimant is disabled and is
4 therefore entitled to benefits. 20 C.F.R. §§ 404.1520(g)(1); 416.920(g)(1).

5 The claimant bears the burden of proof at steps one through four above.
6 *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to
7 step five, the burden shifts to the Commissioner to establish that (1) the claimant is
8 capable of performing other work; and (2) such work “exists in significant
9 numbers in the national economy.” 20 C.F.R. §§ 404.1560(c)(2); 416.960(c)(2);
10 *Beltran v. Astrue*, 700 F.3d 386, 389 (9th Cir. 2012).

11 **ALJ’S FINDINGS**

12 Plaintiff applied for disability insurance benefits and supplemental security
13 income benefits on April 25, 2011, alleging a disability onset date of August 7,
14 2010. Tr. 294-95; Tr. 296-302; Tr. 47. Benefits were denied initially, Tr. 188-91,
15 and upon reconsideration. Tr. 197-201. Plaintiff appeared for a hearing before an
16 administrative law judge (ALJ) on July 12, 2013. Tr. 44-84; Tr. 209-10. Medical
17 expert Margaret Moore, Ph.D. testified. Tr. 44. On July 25 2013, the ALJ denied
18 Plaintiff’s claim. Tr. 162-82. On November 25, 2014, the Appeals Council
19 vacated the hearing decision and remanded for further proceedings. Tr. 183-87.
20 The Appeals Council directed the ALJ to give further consideration to the opinions

1 of Plaintiff's treating physician (Kingsley C. Ugorji, M.D.) and whether the
2 Plaintiff medically requires the use of an assistance device for balance, standing,
3 and/or ambulation, and, if necessary, obtain further medical expert and vocational
4 testimony. Tr. 184-85. Another administrative hearing was held on May 1, 2015
5 before a different ALJ. Medical expert Darius Ghazi, M.D. and vocational expert
6 Daniel McKinney testified. Tr. 85. On May 29, 2015, the ALJ denied Plaintiff's
7 applications. Tr. 17-43.

8 At step one, the ALJ found Plaintiff has not engaged in substantial gainful
9 activity since August 7, 2010. Tr. 23. At step two, the ALJ found Plaintiff has the
10 following severe impairments: degenerative disc disease (DDD) of the lumbar
11 spine, allergic rhinitis, obesity, depression, and anxiety. Tr. 23. At step three, the
12 ALJ found that Plaintiff does not have an impairment or combination of
13 impairments that meets or medically equals the severity of a listed impairment. Tr.
14 23. The ALJ then concluded that Plaintiff has the RFC to perform a "full range of
15 light work," except:

16 he can stand and/or walk for only four hours in a normal 8-hour workday; he
17 would have no use of his right upper extremity (RUE) while walking
18 because of his need for a cane; he can never climb ladders, ropes, or
19 scaffolds; he could only perform occasional stooping, kneeling, crouching,
20 crawling, and climbing of ramps and stairs; he must avoid all exposure to
unprotected heights and concentrated exposure to pulmonary irritants; and
he is capable of no more than semi-skilled tasks with brief superficial
contact with the public.

Tr. 26. At step four, the ALJ found Plaintiff was unable to perform any past relevant work. Tr. 36. At step five, the ALJ found that considering Plaintiff's age, education, work experience, and RFC, there are other jobs that exist in significant numbers in the national economy that the Plaintiff can perform such as production assembler, electronic worker, and garment sorter. Tr. 36-37. The ALJ concluded Plaintiff has not been under a disability, as defined in the Social Security Act, since August 7, 2010 through the date of the decision. Tr. 37.

On September 26, 2016, the Appeals Counsel denied review, Tr. 1-6, making the ALJ's decision the Commissioner's final decision for purposes of judicial review. *See* 42 U.S.C. § 1383(c)(3); 20 C.F.R. §§ 416.1481, 422.210.

ISSUES

Plaintiff seeks judicial review of the Commissioner's final decision denying him disability insurance benefits under Title II and supplemental security income benefits under Title XVI of the Social Security Act. ECF No. 16. Plaintiff raises the following issues for this Court's review:

1. Whether the ALJ properly weighed Plaintiff's symptom claims; and
2. Whether the ALJ properly weighed the medical opinion evidence.

See ECF No. 16 at 8.

1 **DISCUSSION**

2 **A. Plaintiff's Symptom Claims**

3 Plaintiff contends the ALJ erred by improperly discrediting his symptom
4 complaints. ECF No. 16 at 9-12; ECF No. 18 at 2-4.

5 An ALJ engages in a two-step analysis to determine whether a claimant's
6 testimony regarding subjective pain or symptoms is credible.¹ "First, the ALJ must
7 determine whether there is objective medical evidence of an underlying
8 impairment which could reasonably be expected to produce the pain or other
9 symptoms alleged." *Molina*, 674 F.3d at 1112 (internal quotation marks omitted).
10 "The claimant is not required to show that [his] impairment could reasonably be
11 expected to cause the severity of the symptom [he] has alleged; [he] need only

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13
14 ¹ SSR 96-7p, the regulation that governed credibility determinations at the time of
15 this decision, was superseded by SSR 16-3p in March 2016. SSR 16-3p
16 "eliminat[es] the use of the term 'credibility' [to] clarify that subjective
17 symptom evaluation is not an examination of an individual's character." SSR 16-
18 3p, available at 2016 WL 1119029, at *1 (Mar. 16, 2016). However, both
19 regulations require an ALJ to consider the same factors in evaluating the intensity,
20 persistence and limiting effects of an individual's symptoms. *See id.* at *7; SSR
96-7p, 1996 WL 374186, at *3 (July 2, 1996).

1 show that it could reasonably have caused some degree of the symptom.” *Vasquez*
2 *v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2009) (internal quotation marks omitted).

3 Second, “[i]f the claimant meets the first test and there is no evidence of
4 malingering, the ALJ can only reject the claimant’s testimony about the severity of
5 the symptoms if [the ALJ] gives ‘specific, clear and convincing reasons’ for the
6 rejection.” *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (internal
7 citations and quotations omitted). “General findings are insufficient; rather, the
8 ALJ must identify what testimony is not credible and what evidence undermines
9 the claimant’s complaints.” *Id.* (quoting *Lester v. Chater*, 81 F.3d 821, 834 (9th
10 Cir. 1995); *Thomas v. Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002) (“[T]he ALJ
11 must make a credibility determination with findings sufficiently specific to permit
12 the court to conclude that the ALJ did not arbitrarily discredit claimant’s
13 testimony.”)). “The clear and convincing [evidence] standard is the most
14 demanding required in Social Security cases.” *Garrison v. Colvin*, 759 F.3d 995,
15 1015 (9th Cir. 2014) (quoting *Moore v. Comm’r of Soc. Sec. Admin.*, 278 F.3d 920,
16 924 (9th Cir. 2002)).

17 In making an adverse credibility determination, the ALJ may consider, *inter*
18 *alia*, (1) the claimant’s reputation for truthfulness; (2) inconsistencies in the
19 claimant’s testimony or between his testimony and his conduct; (3) the claimant’s
20 daily living activities; (4) the claimant’s work record; and (5) testimony from

1 physicians or third parties concerning the nature, severity, and effect of the
2 claimant's condition. *Thomas*, 278 F.3d at 958-59.

3 This Court finds the ALJ provided specific, clear, and convincing reasons
4 for finding that Plaintiff's statements concerning the intensity, persistence, and
5 limiting effects of his symptoms "are not fully credible." Tr. 28.

6 *1. Objective Medical Evidence*

7 The ALJ found that the objective medical evidence did not support the
8 severity of Plaintiff's claimed physical and mental impairments. Tr. 28-31. An
9 ALJ may not discredit a claimant's pain testimony and deny benefits solely
10 because the degree of pain alleged is not supported by objective medical evidence.
11 *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001); *Bunnell v. Sullivan*, 947
12 F.2d 341, 346-47 (9th Cir. 1991); *Fair v. Bowen*, 885 F.2d 597, 601 (9th Cir.
13 1989). The medical evidence is a relevant factor in determining the severity of a
14 claimant's pain and its disabling effects. *Rollins*, 261 F.3d at 857; 20 C.F.R. §§
15 404.1529(c)(2), 416.929(c)(2) (2016).² Minimal objective evidence is a factor

17 ² Some of the regulations cited in this decision were revised with effective dates in
18 March 2017. *E.g.*, Revisions to Rules Regarding the Evaluation of Medical
19 Evidence, 82 Fed. Reg. 5871 (January 18, 2017) (revising 20 C.F.R. § 404.1529).
20 Since the revisions were not effective at the time of the ALJ's decision, they do not

1 which may be relied upon in discrediting a claimant's testimony, although it may
2 not be the only factor. *See Burch v. Barnhart*, 400 F.3d 676, 680 (9th Cir. 2005).

3 As an initial matter, Plaintiff argues "[b]ecause the ALJ's other grounds
4 upon which the credibility determination is based is flawed, this reason cannot
5 stand." ECF No. 16 at 9. However, as discussed below, the lack of objective
6 evidence was not the sole basis for the ALJ's analysis of Plaintiff's claims and the
7 Court determines the ALJ's additional reasons are clear, convincing and supported
8 by substantial evidence. Moreover, the ALJ set out, in detail the medical evidence
9 contradicting Plaintiff's claims of disabling mental and physical limitations; and
10 ultimately concluded that "the objective medical evidence does not provide a basis
11 for finding limitations greater than those determined in this section." Tr. 31. For
12 example, the ALJ noted that Plaintiff initially reported intermittent back pain with
13 no radiation, however treatment records documented some tenderness, but "good
14 range of motion," "no deformity," and movement without apparent discomfort. Tr.
15 28 (citing Tr. 459-50); Tr. 33 (citing Tr. 419). Similarly, the ALJ noted that
16 imagery of the lumbar spine showed positive findings ("moderate abnormality")
17 for spinal stenosis and degenerative disc disease, however, Plaintiff did not

18 _____
19 apply to this case. For revised regulations, the version effective at the time of the
20 ALJ's decision is noted.

1 undergo surgery and his physician treated the pain through conservative measures
2 including advice to follow a routine exercise program and follow pain medications
3 (tramadol/ibuprofen) as prescribed. Tr. 24; Tr. 28; Tr. 29 (citing Tr. 234). The
4 ALJ also noted the record showed no abnormal diagnostic findings of the lungs
5 and obesity without impact on ambulation, impact on respiratory function, or
6 edema. Tr. 28.

7 Regarding Plaintiff's allegations of symptoms and limitations regarding his
8 mental impairments, the ALJ also remarked on the lack of mental health
9 hospitalizations and failure to maintain treatment with a mental health specialist.
10 Tr. 29; Tr. 31. Furthermore, Plaintiff has been prescribed and taken appropriate
11 medications for the alleged impairments "depending on the level of effectiveness
12 throughout the relevant time." Tr. 31. The ALJ noted the medical records reveal
13 that the medications have been relatively effective, showing on various occasions
14 Plaintiff was "happy," "feeling good," "feeling better" after starting medication,
15 appearing "upbeat," feeling "very, very happy," "very well," and "good." Tr. 30-
16 31. Ultimately, the ALJ accorded some deference to Plaintiff's allegations,
17 concluding that the assessed RFC accounts for Plaintiff's restrictions in pace and
18 difficulty working with the public because of cultural/language barriers. Tr. 34.

19 Plaintiff contends the ALJ isolated some supporting evidence and
20 overlooked the fact that "[m]ental illness can be extremely difficult to predict" and

1 remissions are often of uncertain duration. ECF No. 16 at 10-11. However, the
2 ALJ did not rely upon random evidentiary shards taken out of context. The ALJ
3 engaged in a comprehensive and thorough analysis of the record, chronicling both
4 the ups and downs of Plaintiff's treatment. Mindful that the ALJ has the discretion
5 to evaluate and weigh the evidence, the Court concludes the lack of objective
6 evidence was a relevant consideration in the ALJ's ultimate credibility
7 determination.

8 *2. Course of Treatment*

9 The ALJ found that the conservative treatment recommended by Plaintiff's
10 treating providers undermined the severity of his symptom complaints. Tr. 29, 31.
11 Evidence of "conservative treatment" is sufficient to discount a claimant's
12 testimony regarding the severity of an impairment. *Parra v. Astrue*, 481 F.3d 742
13 (9th Cir. 2007) (citing *Johnson v. Shalala*, 60 F.3d 1428, 1434 (9th Cir. 1995)
14 (treating ailments with an over-the-counter pain medication is evidence of
15 conservative treatment sufficient to discount a claimant's testimony regarding the
16 severity of an impairment)); *see also Tommasetti v. Astrue*, 533 F.3d 1035, 1039
17 (9th Cir. 2008) (holding that the ALJ permissibly inferred that the claimant's "pain
18 was not as all-disabling as he reported in light of the fact that he did not seek an
19 aggressive treatment program" and "responded favorably to conservative treatment
20 including physical therapy and the use of anti-inflammatory medication, a

1 transcutaneous electrical nerve stimulation unit, and a lumbosacral corset”). Here,
2 the ALJ noted that Plaintiff’s treatment primarily consisted of routine follow up
3 care, medication management, a prescription inhaler (for rhinitis), and advice to
4 maintain counseling, a healthy diet plan and physical therapy exercises, which
5 Plaintiff did not do. Tr. 28-31. Concluding the record evidenced a conservative
6 course of treatment, the ALJ also remarked that Plaintiff did not undergo surgery
7 and “[t]here is not much in the record for treatment.” Tr. 29.

8 Furthermore, the ALJ noted that often times, Plaintiff reported progress with
9 this conservative course of treatment. “Impairments that can be controlled
10 effectively with medication are not disabling.” *Warre v. Comm’r of the Soc. Sec.*
11 *Admin.*, 439 F.3d 1001, 1006 (9th Cir. 2005); *see also Osenbrock v. Apfel*, 240
12 F.3d 1157, 1166 (9th Cir. 2001) (holding that the ALJ properly rejected the
13 claimant’s testimony because he did not use “Codeine or Morphine based
14 analgesics that are commonly prescribed for severe and unremitting pain”). The
15 ALJ described the medical evidence where Plaintiff’s reported pain was relieved
16 with acetaminophen and narcotic prescriptions were refused, thus suggesting a lack
17 of severity. Tr. 28-29. As for Plaintiff’s mental impairments, the ALJ summarized
18 treatment records showing “semi-frequent appointments” for medication
19 management, Tr. 29, and evidence of improvement during periods of compliance
20 with medication. Tr. 30-31.

1 Plaintiff contends the ALJ considered only isolated records, rather than the
2 record as a whole, which he claims demonstrates the severity of his symptoms
3 waxed and waned. ECF No. 16 at 10. An ALJ must consider all of the relevant
4 evidence in the record and may not point to only those portions of the records that
5 bolster his findings. *See, e.g., Holohan v. Massanari*, 246 F.3d 1195, 1207–08 (9th
6 Cir. 2001) (holding that an ALJ cannot selectively rely on some entries in
7 plaintiff’s records while ignoring others). The ALJ’s thorough decision does not
8 reflect a selective reliance upon the record, while ignoring other records. Plaintiff
9 does not cite any record ignored by the ALJ or evidence of a contrasting cycle of
10 debilitating symptoms. The Court finds the ALJ reasonably interpreted the
11 evidence as a whole and permissibly discounted Plaintiff’s subjective complaints
12 based on his history of generally conservative treatment and effective control with
13 medication.

14 *3. Activities of Daily Living*

15 The ALJ found that Plaintiff’s alleged limited activities of daily living could
16 not “be objectively verified with any reasonable degree of certainty” and that “it is
17 difficult to attribute that degree of limitation to the claimant’s medical condition, as
18 opposed to other reasons, in view of the relatively weak medical evidence and
19 other factors discussed in this decision.” Tr. 31. Ultimately, the ALJ found that
20 Plaintiff’s reported limited daily activities were outweighed by the other factors.

1 *Id.* The ALJ then noted Plaintiff's abilities to attend appointments, watch
2 television, go grocery shopping, and read a newspaper, suggested he was not
3 precluded from basic work activity. Tr. 32. The ALJ also listed other activities
4 contradicting the contention that Plaintiff is precluded from work due to
5 comprehension barriers or English language deficiencies. Tr. 32 (listing his
6 education and his ability to speak, read, and write in English, earn a "respectable
7 wage" when he first immigrated at a number of jobs, fill out forms, and handle
8 money).

9 Plaintiff does not challenge any of this reasoning, except in Reply,
10 characterizing this reason as "no more than a restatement of the ALJ findings
11 regarding a lack of objective evidence." ECF No. 18 at 3. Plaintiff's observed
12 abilities to speak, read and write English and his experience in previous work
13 settings and handling money, contradict Plaintiff's allegations of disabling
14 communication barriers. This contradiction provides a clear a convincing basis for
15 the ALJ to have discredited the degree of limitation alleged due to communication
16 barriers. *Molina*, 674 F.3d at 1113 (ALJ may discredit a claimant's testimony or
17 claims of a totally debilitating impairment when he or she reports participation in
18 everyday activities that "indicat[e] capacities that are transferable to a work
19 setting" or "contradict claims of a totally debilitating impairment," even when
20 those activities suggest some difficulty functioning) (citations omitted).

1 However as to Plaintiff's other symptom complaints, the Court notes that
2 throughout the Ninth Circuit, courts have criticized ALJs for using identical
3 language used by the ALJ here, explaining that "simply because a fact cannot be
4 verified objectively provides little evidence to support the conclusion that the
5 individual is not being truthful about such fact in any particular instance." *Fisher*
6 *v. Colvin*, 2015 WL 1442064 (E.D. Cal. Feb. 20, 2015) (quoting *Garcia v. Astrue*,
7 2013 WL 1797029 (S.D. Cal. Mar. 13, 2013)); *see also Baxla v. Colvin*, 45 F.
8 Supp. 3d 1116, 1128 (D. Ariz. 2014) ("that a fact cannot be verified objectively
9 provides little evidence to support the conclusion that the individual is not being
10 truthful about such fact in any particular instance"); *Altamirano v. Colvin*, 2013
11 WL 3863956 (C.D. Cal. July 24, 2013) (noting that "objective verifiability to a
12 reasonable degree of certainty" is not a requirement imposed by law). Moreover,
13 the Ninth Circuit has "repeatedly warned that ALJs must be especially cautious in
14 concluding that daily activities are inconsistent with testimony about pain."
15 *Garrison v. Colvin*, 759 F.3d 995, 1020 (9th Cir. 2014). Accordingly, the lack of
16 objective verification of Plaintiff's level of activity was not clear and convincing
17 evidence to discount Plaintiff's other symptom complaints. *See Orn*, 495 F.3d at
18 639 (the ALJ erred rejecting a claimant's credibility where his "activities [did] not
19 meet the threshold for transferable work skills, the second ground for using daily
20 activities in credibility determinations"); *Lewis v. Apfel*, 236 F.3d 503, 517 (9th

1 Cir. 2001) (limited activities did not constitute convincing evidence that the
2 claimant could function regularly in a work setting).

3 Nevertheless, this error is harmless where, as discussed *supra*, the ALJ lists
4 additional reasons, supported by substantial evidence, for discrediting Plaintiff's
5 symptom complaints. *See Carmickle v. Comm'r of Soc. Sec. Admin.*, 533 F.3d
6 1155, 1162-63 (9th Cir. 2008); *Molina*, 674 F.3d at 1115 (“[S]everal of our cases
7 have held that an ALJ’s error was harmless where the ALJ provided one or more
8 invalid reasons for disbelieving a claimant’s testimony, but also provided valid
9 reasons that were supported by the record.”); *Batson v. Comm'r of Soc. Sec.*
10 *Admin.*, 359 F.3d 1190, 1197 (9th Cir. 2004) (holding that any error the ALJ
11 committed in asserting one impermissible reason for claimant’s lack of credibility
12 did not negate the validity of the ALJ’s ultimate conclusion that the claimant’s
13 testimony was not credible).

14 Because the ALJ’s adverse determination regarding Plaintiff’s symptoms
15 was supported by specific, clear, and convincing reasons, the Court upholds it.

16 **B. Medical Opinion Evidence**

17 Plaintiff contends ALJ improperly weighed the medical opinions of treating
18 physician Kingsley Ugorji, M.D.; examining doctors William Shanks, M.D., John
19 Arnold, Ph.D. and Frank Rosekrans, Ph.D; and testifying medical experts,
20 Margaret Moore, Ph.D., Darius Ghazi, M.D. ECF No. 16 at 13-20.

1 In determining RFC, the ALJ is required to consider the combined effect of
2 all the claimant's impairments, mental and physical, exertional and non-exertional,
3 severe and non-severe. 42 U.S.C. §§ 423(d) (2)(B), (5)(B). In weighing medical
4 source opinions there are three types of physicians: "(1) those who treat the
5 claimant (treating physicians); (2) those who examine but do not treat the claimant
6 (examining physicians); and (3) those who neither examine nor treat the claimant
7 but who review the claimant's file (nonexamining or reviewing physicians)."
8 *Holohan v. Massanari*, 246 F.3d 1195, 1201-02 (9th Cir. 2001) (brackets omitted).
9 "Generally, a treating physician's opinion carries more weight than an examining
10 physician's, and an examining physician's opinion carries more weight than a
11 reviewing physician's." *Id.* "In addition, the regulations give more weight to
12 opinions that are explained than to those that are not, and to the opinions of
13 specialists concerning matters relating to their specialty over that of
14 nonspecialists." *Id.* (citations omitted).

15 If a treating or examining physician's opinion is uncontradicted, an ALJ may
16 reject it only by offering "clear and convincing reasons that are supported by
17 substantial evidence." *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005).
18 "However, the ALJ need not accept the opinion of any physician, including a
19 treating physician, if that opinion is brief, conclusory and inadequately supported
20 by clinical findings." *Bray v. Comm'r of Soc. Sec. Admin.*, 554 F.3d 1219, 1228

1 (9th Cir. 2009) (internal quotation marks and brackets omitted). “If a treating or
2 examining doctor’s opinion is contradicted by another doctor’s opinion, an ALJ
3 may only reject it by providing specific and legitimate reasons that are supported
4 by substantial evidence.” *Bayliss*, 427 F.3d at 1216 (citing *Lester v. Chater*, 81
5 F.3d 821, 830-31 (9th Cir. 1995)).

6 To the extent that Drs. Ugorji, Shanks, Arnold, and Rosekrans assessed
7 Plaintiff with limitations that would prevent him from working, these opinions are
8 contradicted by the opinions of the state agency reviewing physicians, Drs. Gordon
9 Hale, M.D., Matthew Comrie, Psy.D., and James Bailey, Ph.D., and testifying
10 medical experts Dr. Moore and Dr. Ghazi. Therefore, the ALJ was required to
11 provide specific and legitimate reasons for rejecting the opinions of Drs. Ugorji,
12 Shanks, Arnold, and Rosekrans.

13 *1. Kingsley Ugorji, M.D.*

14 Dr. Ugorji was Plaintiff’s treating physician at Community Health
15 Association of Spokane. Tr. 418. In March 2012, Dr. Ugorji noted Plaintiff’s
16 chronic back pain “should not be disabling,” and that Plaintiff’s “main medical
17 problem limiting his ability to work should be his [m]ental health[.] I will defer
18 this to his psychological evaluation.” Tr. 477. In August 2012, Dr. Ugorji
19 checked a box indicating Plaintiff was “disabled as defined in 42 U.S.C. § 423” on
20 the Spokane Housing Authority verification form. Tr. 515. On July 31, 2013, Dr.

1 Ugorji opined that Plaintiff would have “mark[ed] impairment in [the] workplace’
2 and be “unable to perform full-time work” due to chronic pain and severe
3 depression, and then further opined that “at most” Plaintiff could only perform
4 “sedentary work with some difficulties especially in the area of communications,
5 concentration, and alertness.” Tr. 705. In July 2014, after the first ALJ’s
6 decision, Dr. Ugorji completed a physical functional evaluation form limiting
7 Plaintiff to sedentary work, and indicating that Plaintiff’s degenerative disc
8 disease would cause a very significant interference with the ability to perform one
9 or more basic work-related activities. Tr. 708-10. The ALJ identified several
10 reasons for giving these “various opinions” “partial weight.” Tr. 32.

11 First, the ALJ did not give weight to Dr. Ugorji’s opinion that Plaintiff “has
12 a disability” and was unable “to engage in substantial gainful activity,” noting that
13 these issues are reserved for the Commissioner. Tr. 32. The regulations provide
14 that a statement by a medical source that a Plaintiff is “unable to work” is not a
15 medical opinion and is not due any special significance because the legal
16 conclusion of disability is reserved to the Commissioner. 20 C.F.R. § 404.1527 (d)
17 (3) (“We will not give any special significance to the source of an opinion on
18 issues reserved to the Commissioner . . . ”); 20 C.F.R. § 416.927(d). The legal
19 conclusion of disability is reserved exclusively to the Commissioner. *See* 20
20 C.F.R. § 404.1527(d); *see also McLeod v. Astrue*, 640 F.3d 881, 884 (9th Cir.

2011) (“Although a treating physician’s opinion is generally afforded the greatest weight in disability cases, it is not binding on an ALJ with respect to the existence of an impairment or the ultimate issue of disability.”). Nevertheless, the ALJ is required to “carefully consider medical source opinions about any issue, including opinion about issues that are reserved to the Commissioner.” Social Security Ruling (SSR) 96-5p, 1996 WL 374183, at *2 (July 2, 1996); *Holohan v. Massanari*, 246 F.3d 1195, 1203-04 (9th Cir. 2011) (“If the treating physician’s opinion on the issue of disability is controverted, the ALJ must still provide ‘specific and legitimate’ reasons in order to reject the treating physician’s opinion.”). Though the ALJ was not bound by Dr. Ugorji’s statements concerning the ultimate issue of disability, he nevertheless had the obligation to state legally sufficient reasons for rejecting it.

Next, the ALJ discounted Dr. Ugorji’s opinions because they were “conflicting,” finding them inconsistent internally with each other and with other parts of the record. Tr. 32. An ALJ may reject opinions that are internally inconsistent. *Nguyen v. Chater*, 100 F.3d 1462, 1464 (9th Cir. 1996). An ALJ is not obliged to credit medical opinions that are unsupported by the medical source’s own data and/or contradicted by the opinions of other examining medical sources. *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008). The ALJ found it inconsistent that Dr. Ugorji had expressed an opinion that Plaintiff’s

1 physical impairment was not disabling, then just a few months later opined
2 Plaintiff was disabled, and then later stated Plaintiff could engage in sedentary
3 work. Tr. 32. Plaintiff cites no specific evidence, but contends Dr. Ugorji's
4 opinions are not inconsistent, but rather "over time shifted with familiarity with
5 the patient, additional treatment and updated observations." ECF No. 16 at 19.
6 Plaintiff's argument is unpersuasive and fails to address Dr. Ugorji's March 2012
7 opinion that Plaintiff's pain was not disabling. ECF No. 16 at 18, 19 n.3.

8 The ALJ also discounted Dr. Ugorji's opinion as being inconsistent with his
9 "own repeated unremarkable examinations" and the record as a whole, including
10 the medical expert testimony indicating Plaintiff's impairments would not warrant
11 a limitation to sedentary work. Tr. 32. Plaintiff asserts the ALJ failed to
12 adequately explain this finding, however, Plaintiff has failed to refute the ALJ's
13 statement regarding the "unremarkable examinations." *But see*, ECF No. 17 at 13
14 (listing generally benign treatment notes); *Bayliss*, 427 F.3d 1211, 1218 (9th
15 Cir.2005) (inconsistency with medical evidence constitutes germane reason). To
16 the extent the ALJ did not discuss the treatment notes in more detail, the ALJ was
17 not required to where their substance was adequately represented by the evidence
18 the ALJ did discuss. *See Vincent v. Heckler*, 739 F.2d 1393, 1394–95 (9th
19 Cir.1984) (per curiam) (holding that evidence that is not significant or probative
20 need not be explicitly discussed by the ALJ).

1 The Court may not reverse the ALJ's decision based on Plaintiff's
2 disagreement with the ALJ's interpretation of the record. *See Tommasetti v.*
3 *Astrue*, 533 F.3d 1035, 1038 (9th Cir. 2008) ("[W]hen the evidence is susceptible
4 to more than one rational interpretation" the court will not reverse the ALJ's
5 decision). The Court concludes the inconsistencies noted by the ALJ were
6 specific and legitimate reasons for his decision to reject Dr. Ugorji's opinions that
7 Plaintiff is unable to work and limited to sedentary work, and to credit Dr.
8 Ugorji's statements that Plaintiff's chronic back pain would not prevent him from
9 all work.

10 2. *William Shanks, M.D.*

11 Examining physician William Shanks performed a physical evaluation of
12 Plaintiff in August 2012. Tr. 508-11. Dr. Shanks concluded Plaintiff was having
13 "significant problems with his back" and "would not likely be capable of returning
14 to work as a painter." Tr. 510-11. He recommended Plaintiff be evaluated by a
15 spine specialist to determine if there is any treatment that would benefit him. Tr.
16 510. The ALJ accorded "significant weight" to the opinion Plaintiff was having
17 "significant problems with his back," Tr. 33, but found Dr. Shanks' opinion failed
18 to provide "any useful specifics" in assessing functioning.

19 Plaintiff contends the ALJ "disregard[ed]" Dr. Shank's finding that
20 Plaintiff's work function was impaired and did not incorporate Dr. Shank's opinion

1 “in the discussion or ultimate decision.” ECF No. 16 at 20. The Court disagrees.
2 The ALJ accurately summarized Dr. Shank’s opinion. Tr. 33. Consistent with the
3 opinion, the ALJ determined Plaintiff could not return to his past relevant work
4 and included limitations in the RFC about heights, ladders, and pulmonary
5 irritants. Tr. 26. The ALJ accurately concluded Dr. Shank’s assessment did not
6 represent evidence *otherwise* probative of Plaintiff’s functional capacity. Nowhere
7 does Dr. Shanks indicate that Plaintiff is incapable of working or set forth other
8 specific deficits. *Valentine v. Comm’r Soc. Sec. Admin.*, 574 F.3d 685, 692 n.2
9 (9th Cir. 2009) (rejecting invitation to find that the ALJ failed to account for
10 limitations in unspecified way, where Plaintiff had failed to detail what other
11 physical limitations follow from the evidence). Therefore, the Court cannot
12 conclude the ALJ ignored evidence of Plaintiff’s impairments when he fashioned
13 the RFC.

14 *3. John Arnold, Ph.D.*

15 Psychologist John Arnold prepared two psychological/psychiatric evaluation
16 in 2011. Tr. 393-400; Tr. 401-407. He diagnosed major depressive disorder,
17 recurrent and mild, and rule out cognitive disorder. Tr. 394; 402. He opined
18 Plaintiff would be able to understand and carry out simple instructions, concentrate
19 for short periods of time, complete simple tasks without disrupting others, adapt to
20 minor changes in a work setting, and recognize hazards. Tr. 396. However, he

1 opined Plaintiff would have a marked limitation in his ability to communicate and
2 perform effectively in a work setting with public contact. Tr. 395, 403. The ALJ
3 accorded partial weight to Dr. Arnold's opinions, discounting the "marked"
4 limitation, noting the "checkbox" notation is "not consistent with this source's own
5 narrative, GAF score, or the treatment record." Tr. 34.

6 Plaintiff faults the ALJ for failing to elaborate on this finding, and on that
7 basis, contends the ALJ's decision does not articulate a specific or legitimate
8 reason for discounting Dr. Arnold's opinion. ECF No. 16 at 15. Yet Plaintiff does
9 not identify any limitations identified by Dr. Arnold that were omitted from the
10 ALJ's assessment of Plaintiff's RFC. ECF No. 16 at 13-15. An ALJ need not
11 provide reasons for rejecting a physician's opinion where the ALJ incorporated
12 them into the RFC, *Turner v. Comm'r, Soc. Sec. Admin.*, 613 F.3d 1217, 1223 (9th
13 Cir. 2010), and when evidence reasonably supports either confirming or reversing
14 the ALJ's decision, the court may not substitute its judgment for that of the ALJ,
15 *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir.1999). The Court need not
16 determine whether the ALJ's three stated reasons were insufficient because any
17 error in the partial rejection of Dr. Arnold's opinion was harmless; the limitation to
18 brief, superficial contact with the public is contained within the ALJ's RFC
19 determination.

20 4. *Frank Rosekrans, Ph.D.*

1 Dr. Rosekrans examined Plaintiff twice, in 2012 and in 2014. Tr. 516-519;
2 719-726. He opined that Plaintiff would have the following “severe” limitations,
3 i.e., “the inability to perform the particular activity in regular competitive
4 employment or outside of a sheltered workshop”: (1) the ability to perform
5 activities within a schedule, maintain regular attendance and be punctual within
6 customary tolerances without special supervision; (2) communicate effectively in a
7 work setting; and (3) complete a normal workday and workweek without
8 interruptions from psychologically based symptoms. Tr. 518; 722. He opined
9 there were other areas where Plaintiff would have marked or moderate limitations.
10 Tr. 518; Tr. 722. The ALJ gave the opinions “little weight.” Tr. 34.

11 First, the ALJ concluded Dr. Rosekrans’ opinion was “grossly out of step
12 with the treatment records, which uniformly show mild-moderate psychological
13 impairment.” Tr. 34. The ALJ explained that the record was “replete with
14 instances where the claimant was doing better when on medication and was not
15 doing so well when off the medication.” *Id.* The ALJ also concluded that “the
16 majority of the record does not support his findings,” Tr. 35, noting that Plaintiff
17 stated himself that he does “not have problems getting along with others or dealing
18 with supervisors.” Tr. 35. Plaintiff contends this explanation was too perfunctory
19 because he did not “identify the treatment records that ostensibly show[] a
20 mild/moderate impairment nor does he identify the portion of the record that shows

1 a difference in [Plaintiff's] mental state.” ECF No. 16 at 16.

2 An ALJ may reject limitations “unsupported by the record as a whole.”

3 *Batson v. Comm’r of the Soc. Sec. Admin.*, 359 F.3d 1190, 1195 (9th Cir. 2003).

4 The specific and legitimate reason standard can be met by “setting out a detailed

5 and thorough summary of the facts and conflicting clinical evidence, [the ALJ]

6 stating his interpretation thereof, and making findings.” *Reddick v. Chater*, 157

7 F.3d 715, 725 (9th Cir. 1998); *Embrey v. Bowen*, 849 F.2d 418, 421–22 (9th Cir.

8 1988) (conclusory reasons do not “achieve the level of specificity” required to

9 justify an ALJ’s rejection of an opinion); *McAllister v. Sullivan*, 888 F.2d 599, 602

10 (9th Cir. 1989) (an ALJ’s rejection of a physician’s opinion on the ground that it

11 was contrary to clinical findings in the record was “broad and vague, failing to

12 specify why the ALJ felt the treating physician’s opinion was flawed”); *see also*

13 *Blakes v. Barnhart*, 331 F.3d 565, 569 (7th Cir. 2003) (“We require the ALJ to

14 build an accurate and logical bridge from the evidence to her conclusions so that

15 we may afford the claimant meaningful review of the SSA’s ultimate findings.”);

16 *Rice v. Barnhart*, 384 F.3d 363, 370 n.5 (7th Cir. 2004) (“consider[ing] the ALJ’s

17 treatment of the record evidence in support of both his conclusions at steps three

18 and five” because “it is proper to read the ALJ’s decision as a whole” and “it

19 would be a needless formality to have the ALJ repeat substantially similar factual

20 analyses at both steps three and five”); *Jones v. Barnhart*, 364 F.3d 501, 505 (3d

1 Cir. 2004) (stating that “the ALJ’s decision, read as a whole, illustrates that the
2 ALJ considered the appropriate factors in reaching the conclusion that [the
3 claimant] did not meet the requirements for any listing”).

4 The ALJ’s reliance upon inconsistency with the record was not too broad,
5 vague, or perfunctory. The ALJ’s decision, read as a whole, built an accurate and
6 logical bridge from the evidence, outlined in detail earlier in the ALJ’s decision, to
7 his conclusions that achieves the required level of specificity. For example, the
8 ALJ noted that Plaintiff’s physicians had maintained a conservative course of
9 treatment, his mental impairments never resulted in prolonged hospitalization, and
10 though he had started counseling (Tr. 30-31), he failed to maintain a relationship
11 with a mental health specialist. Tr. 31. The ALJ noted treatment records
12 documenting improvement in mental health with sleep, Tr. 30, medication
13 management, Tr. 30-31, and improved life circumstances, Tr. 31. The ALJ
14 provided a specific and legitimate reason for giving little weight to Dr. Rosekrans’
15 opinions.

16 In addressing other contentions elsewhere in the decision, the ALJ provides
17 additional reasons for discounting Dr. Rosekrans’ opinion. Tr. 31, 35. Though Dr.
18 Rosekrans found Plaintiff difficult to understand, the ALJ rejected the suggestion
19 that Plaintiff could not understand or communicate in English. Tr. 32. The ALJ
20 pointed out factually inconsistent psychosocial history reported in Dr. Rosekrans’

1 2012 assessment such as that Plaintiff was never married and spoke little English.
2 Tr. 31. The ALJ also noted that Dr. Rosekrans “did not use widely accepted
3 psychological testing besides the Trails A and B” tests. Tr. 35. These additional
4 considerations of Dr. Rosekrans’ assessment support this Court’s conclusion the
5 ALJ’s review of this record was thorough and adequate.

6 *5. Margaret Moore, Ph.D. and Darius Ghazi, M.D.*

7 Plaintiff also challenges the ALJ’s reliance on the opinions of medical
8 experts Dr. Moore and Dr. Ghazi.

9 a. Bias

10 Plaintiff contends Dr. Moore’s testimony evinces “bias” against claimants
11 and disdain toward Plaintiff, which taints the ALJ’s reliance upon her opinion.
12 ECF No. 16 at 17. To demonstrate Dr. Moore’s bias, Plaintiff points to Dr.
13 Moore’s statements that the record evinced “a pattern of difficulties with
14 acculturation,” Tr. 51, “dependent lifestyle, complete with the whole issue of
15 seeking support, social support,” Tr. 51, “difficulty motivating himself,” Tr. 52,
16 and focus upon maintaining benefits. ECF No. 16 at 17. Plaintiff also points to
17 Dr. Moore’s statements regarding Plaintiff’s treatment provider (“I think that the
18 whole involvement with CHAS is in many ways a mystery to me why so much
19 time has been invested in context with the claimant,” Tr. 51) and inquiry regarding
20 Plaintiff’s immigration and work history.

1 Plaintiff's allegation of "clear" and "compelling" bias in order to eliminate
2 any persuasive weight attributed to Dr. Moore reveals an argument that constitutes
3 disagreement with the doctor's interpersonal manner and her conclusions. It does
4 not reflect on the integrity of the process or suggest Plaintiff's right to fair hearing
5 was compromised. Medical experts testify as impartial witnesses at the hearing.
6 The ALJ must "qualify" them by eliciting information, including but not limited to,
7 impartiality, expertise, and professional qualifications. Dr. Moore's professional
8 qualifications are part of the record. Tr. 236-38. She has worked as an expert for
9 the Social Security Administration since 1998. *Id.* Plaintiff's counsel stipulated to
10 these qualifications. Tr. 49. Plaintiff's counsel had the opportunity confront and
11 examine Dr. Moore regarding adverse testimony. When given the opportunity,
12 counsel indicated "[n]o questions." Tr. 53. Plaintiff also had the right to object
13 based upon bias, but did not do so either at the hearing or before the Appeals
14 Council. *See* Tr. 251 (counsel's letter to the Appeals Council accusing Dr. Moore
15 of lack of diligence or incompetence). The Court will not presume any inherent
16 unfairness in the ALJ's reliance on Dr. Moore's opinions solely based upon Dr.
17 Moore's statements regarding issues relevant in evaluating the record pertaining to
18
19
20

1 acculturation³, work history, the presence of benefit-seeking behavior, and degree
2 of impairment. *Cf. Ventura v. Shalala*, 55 F.3d 900 (3rd Cir. 1995) (holding
3 Plaintiff was entitled to new hearing because of the ALJ's offensive conduct
4 prevented the claimant from receiving a full and fair hearing).

5 b. Substantial Evidence

6 Relying upon *Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9th Cir. 2001),
7 Plaintiff also contends the ALJ improperly "accepted" Dr. Moore and Dr. Ghazi's
8 opinions over treating and examining medical sources "without valid explanation."
9 ECF No. 16 at 18, 20. When an ALJ rejects contradicted opinions of physicians,
10 the ALJ must not only identify specific and legitimate reasons for rejecting those
11 opinions, but the decision must also be "supported by substantial evidence in the
12 record." *Lester*, 81 F.3d at 830. *Tonapetyan* held that a "contrary opinion of a
13 non-examining medical expert may constitute substantial evidence when it is

14 _____
15 ³ Plaintiff suggests "none of these remarks were related to the opinion she was
16 hired to render," however, "Acculturation Difficulty" was specifically diagnosed
17 by Dr. Rosekrans. Tr. 721. Though Plaintiff finds Dr. Moore's use of the phrase
18 "pattern of difficulties" off-putting, ECF No. 18 at 5, Dr. Moore later restated her
19 opinion that the record evinced "some chronic issues with acculturation." Tr. 52.
20 This is consistent with the opinions of Dr. Rosekrans. Tr. 720-21.

1 consistent with other independent evidence in the record.” 242 F.3d at 1149;
2 *Lester*, 81 F.3d at 830-31.

3 Here, as noted *supra*, the ALJ articulated specific and legitimate reasons for
4 discrediting the opinions of certain treating and examining physicians. Moreover,
5 as the ALJ observed, the ALJ did not adopt Drs. Moore and Ghazi’s opinions in
6 their entirety. The ALJ concluded based upon his review of the record as a whole,
7 that Plaintiff was more restricted than was suggested by either expert. Tr. 32
8 (explaining limitation to unskilled or semi-skilled tasks with brief superficial
9 interaction with the general public). The ALJ credited the experts’ opinions to the
10 extent they suggested Plaintiff was not disabled. Tr. 35. These opinions constitute
11 substantial evidence because the independent evidence, thoroughly reviewed by
12 the ALJ, supports the decision. Though noting a relatively “sparse” record, the
13 ALJ devoted five pages of the decision to his review of the objective evidence, Tr.
14 28; Plaintiff’s treatment records, Tr. 28-32 (including “repeated unremarkable
15 examinations,” Tr. 32, and conservative courses of treatment), Plaintiff’s activities
16 of daily living, Tr. 31-32, and Plaintiff’s testimony, Tr. 33.

17 It is the ALJ’s responsibility to resolve conflicts in the medical evidence.
18 *Andrews*, 53 F.3d at 1039. Where the ALJ’s interpretation of the record is
19 reasonable as it is here, it should not be second-guessed. *Rollins v. Massanari*, 261
20 F.3d 853, 857 (9th Cir. 2001). The Court must consider the ALJ’s decision in the

1 context of “the entire record as a whole,” and if the “evidence is susceptible to
2 more than one rational interpretation, the ALJ’s decision should be upheld.” *Ryan*
3 *v. Comm’r of Soc. Sec.*, 528 F.3d 1194, 1198 (9th Cir.2008) (internal quotation
4 marks omitted). Although Plaintiff points to various pieces of evidence in the
5 record that could support a more restrictive RFC finding if interpreted differently
6 than by the ALJ, read in the context of the record as a whole, the ALJ reasonably
7 found that Plaintiff’s limitations did not prevent him from being able to work.
8 Reversal is therefore not warranted on this basis.

9 CONCLUSION

10 After review, the Court finds that the ALJ’s decision is supported by
11 substantial evidence and free of harmful error. **IT IS ORDERED:**

12 1. Plaintiff’s Motion for Summary Judgment (ECF No. 16) is **DENIED**.

13 2. Defendant’s Motion for Summary Judgment (ECF No. 17) is
14 **GRANTED**.

15 The District Court Executive is directed to file this Order, enter
16 **JUDGMENT FOR THE DEFENDANT**, provide copies to counsel, and **CLOSE**
17 **THE FILE**.

18 DATED February 26, 2018.

19 s/Mary K. Dimke
20 MARY K. DIMKE
UNITED STATES MAGISTRATE JUDGE